

Commodity Futures Trading Commission

§ 12.406

Law Judge, an initial decision or order disposing of fewer than all of the claims or all of the parties shall be subject to revision by the decisionmaker at any time before a disposition is made of all remaining claims or parties, and no appeal may be taken to the Commission pursuant to this rule.

§ 12.403 Commission review on its own motion.

(a) *In general.* The Commission may on its own motion, within 30 days after it has been served on all parties, determine to review an initial decision, or other order disposing of all issues in the proceeding as to all claims and all parties, in a proceeding forwarded pursuant to §12.26 (b) and (c) of these rules. In such event, the Commission may determine the scope of the issues on review, and make provisions for the filing of briefs or, if deemed appropriate, such other means for the parties to present their views. The parties shall be duly notified thereof by the Proceedings Clerk.

(b) *Commission review of a final decision in a voluntary decisional proceeding.* If such action is necessary to prevent manifest injustice, the Commission may, upon its own motion, review a final decision issued pursuant to §12.106 of these rules by appropriate order filed with the Proceedings Clerk within 30 days after service upon the parties of the final decision. In such event, the Commission may determine the scope of the issue on review, make provisions for the filing of briefs (or, if deemed appropriate, such other means for the parties to present their views). The parties shall be duly notified thereof by the Proceedings Clerk.

§ 12.404 The record of proceedings.

The record of proceedings on appeal before the Commission shall include: The pleadings; motions and requests filed, and rulings thereon; the transcript of the testimony taken at an oral hearing, together with the exhibits filed therein; the transcript of testimony taken during an oral examination by telephone; any statements or stipulations filed in any proceeding; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclu-

sions, and orders and briefs as may have been permitted to be filed in connection with an oral hearing; such statements of objections, and briefs in support thereof, as may have been filed in the proceedings; and the initial (or final) decision, or other order disposing of issues in the proceeding.

[49 FR 6621, Feb. 22, 1984, as amended at 59 FR 9638, Mar. 1, 1994]

§ 12.405 Leave to adduce additional evidence.

Any time prior to issuance of its final decision pursuant to §12.406, the Commission may, after notice to the parties and an opportunity for them to present their views, reopen the hearing to receive further evidence. The application shall show to the satisfaction of the Commission that the additional evidence is material, and that there were reasonable grounds for failure to adduce such evidence at the hearing. The Commission may receive the additional evidence or may remand the proceeding to the Judgment Officer or Administrative Law Judge to receive the additional evidence.

§ 12.406 Final decision of the Commission.

(a) *Opinion and order.* Unless the Commission, in accordance with paragraph (b) of this section, orders summary affirmance of the initial decision, the Commission's opinion and order in a proceeding appealed pursuant to §12.401 of these rules shall constitute the Commission's final decision, effective upon service. On review, the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial decision and make any findings or conclusions which in its judgment are warranted based on the record in the proceeding.

(b) *Order on summary affirmance.* If the Commission, in its opinion, finds that the result reached in the initial decision is substantially correct and that none of the arguments on appeal made by the appealing party raise any important question of law or policy, the Commission may, by appropriate order, summarily affirm the initial decision and order without opinion,